

**COACHELLA VALLEY MOUNTAINS CONSERVANCY
REGULAR MEETING
73-710 Fred Waring Drive, Suite 115
Palm Desert, California
January 14, 2008 - 3:00 p.m.**

M I N U T E S

MEMBERS PRESENT:

Karl Baker, City of Desert Hot Springs
Kathy Dice, California State Parks
John Donnelly, Wildlife Conservation Board (on telephone)
Jim Foote, U.S. Forest Service (non-voting)
John Kalish, Bureau of Land Management
Tom Kirk, City of La Quinta
Eddy Konno, California Department of Fish and Game
Anne Sheehan, Department of Finance (on telephone)
Paul Marchand, City of Cathedral City – *Chairman*
Chris Mills, City of Palm Springs – *Vice Chairman*
Al Muth, University of California
Joan Taylor, Governor's Appointee
Ellen Lloyd Trover, Senate Rules Committee Appointee

MEMBERS ABSENT:

Jim Ferguson, City of Palm Desert
Richard Milanovich, Agua Caliente Band of Cahuilla Indians
Gordon Moller, City of Rancho Mirage
Larry Spicer, City of Indian Wells
Curt Sauer, National Park Service
Roy Wilson, Riverside County Supervisor, District IV

OTHERS PRESENT:

Staff

Bill Havert, Executive Director
Geary Hund, Associate Director
Kerrie Marshall, Staff Services Analyst
Laurie Pearlman, Attorney General's Office

Other

Buford Crites, Private Citizen

VACANT POSITIONS:

Assembly Appointee

1.0 Call to Order/Introduction of Guests

This meeting of the Coachella Valley Mountains Conservancy (Conservancy) was called to order by Chairman Marchand at 3:05 p.m. Kathy Dice arrived late and was not present to vote on the minutes for the November meeting. Anne Sheehan, from the Department of Finance, and John Donnelly from the Wildlife Conservation Board were present on the telephone. Chairman Marchand introduced Karl Baker from the City of Desert Hot Springs.

2.0 Approval of Minutes of November 5, 2007

Chairman Marchand asked if there were any additions or changes to the minutes. A motion was made and seconded (Mills/Trover) to approve the minutes. The motion passed with the following members voting yes: J. Donnelly, J. Kalish, T. Kirk, E. Konno, C. Mills, A. Muth, A. Sheehan, J. Taylor, E. Trover and P. Marchand, The following members abstained: K. Baker.

3.0 Public Comments on Items Not of the Agenda

No public comments were made.

4.0 Public Hearing Items

4.1 Resolution 2008-01 approving a grant to the Friends of the Desert Mountains to assist with the acquisition of approximately 911.39 acres in the Santa Rosa and San Jacinto Mountains National Monument.

Bill gave an oral presentation to the Board and described the location of the RJB property by directing them to the maps in their agendas. He explained that the property consists of two separate groups of parcels in the Santa Rosa and San Jacinto Mountains National Monument with approximately 544 acres located in the mouth of lower Palm Canyon area of Palm Springs. He noted that there is BLM land immediately north and east; to the south is Agua Caliente Indian Reservation land; and to the west are the existing residential community of Andreas Hills and other portions of the Reservation. Bill described the other portion of the RJB property that comprises approximately 368 acres located immediately south of the Springcrest area in the national forest portion of the National Monument.

Bill noted that a portion of the 544 acre portion of the RJB property also contains a portion of two trails proposed as year-round trails in the Multiple Species Habitat Conservation Plan (MSHCP); namely, the Thielman and Wild Horse trails. The acquisition of the property would protect the recreational resources through the public access to and maintenance of these trails. Acquisition of the Springcrest portion of the property would help protect the scenic corridor along Highway 74. The property is quite rugged and the views from the property are quite stunning. There are some dirt access roads and adjacent properties have been developed, so the property could easily be developed if not acquired for conservation.

Paul Marchand asked if any portion of these properties were on the reservation. Bill answered no. Bill explained that all six parcels are currently in escrow for purchase by the Friends of the Desert Mountains, contingent upon the Friends receiving a grant from the Conservancy to fund the acquisition. Should the Governing Board approve a grant today, the Friends would be able to proceed with the acquisition. Bill asked if there were any questions or comments.

Al Muth asked if the property with the water tanks was gated. Bill explained that upper access road was not gated and on the lower property, one access route was gated and the other was not. There is still access to the trails on foot. John Donnelly asked what RJB stood for...Bill answered that he was not sure but believed it stands for the initials of the three owners in the limited partnership. Karl Baker asked if land purchased by the Conservancy becomes accessible to the public. Bill answered that it depends on each piece of property and the reasons for acquiring it. In this case, as the Conservancy considers granting these funds, it is identifying one of the reasons for acquiring this property as recreational use consistent with the MSHCP. An individual determination must be made for each property because each piece of property has different resource values that may make it so sensitive that public access to the property has to be constrained. As a signatory to the MSHCP, the Conservancy will adhere to the land uses identified in the Reserve Management Unit Plans, when these are prepared.

Karl Baker asked for clarification that there is potential for recreational use on this property and Bill answered yes. Joan Taylor commented that the purpose of both acquisitions is very much for trail use and this particular one will have a dog trail. Chris Mills noted that this acquisition is very important to the City of Palm Springs.

Karl Baker asked the attorney if there would be a conflict with his voting on this resolution since the City of Desert Hot Springs is not a Permittee under the MSHCP. The attorney said no and Bill added that Karl would be voting as a part of this Board and since the funds for this acquisition are coming from Prop 84 funds, there would not be a conflict.

Chairman Marchand opened the item for public comment. No public comments were made. He then asked if there was any discussion on the item and there was none. He asked for a motion to approve Resolution 2008-01. A motion was made and seconded (Taylor/Mills) to adopt the resolution. The motion passed with the following members voting yes: J. Donnelly, K. Baker, J. Kalish, T. Kirk, E. Konno, C. Mills, A. Muth, A. Sheehan, J. Taylor, E. Trover, and P. Marchand. The following members abstained: K. Dice

4.2 Resolution 2008-02 approving a grant to the Friends of the Desert Mountains to assist with the acquisition of approximately 8.9 acres in the Santa Rosa and San Jacinto Mountains National Monument.

Bill gave an oral presentation to the Board and described the property along Highway 74, a state scenic highway, through the Santa Rosa and San Jacinto Mountains National Monument. This parcel is across the highway from the entrance to the Springcrest area and affords a panoramic view of Palm Canyon, the San Jacinto Mountains, and the Coachella Valley. The Friends currently has an 8.9 acre parcel in escrow in the Springcrest area. As he pointed out on the map the property has been somewhat disturb by grading some years back. Mr. Muller trespassed onto US Forest Service (USFS) property and the USFS has a lien on the property. Part of the purchase negotiation is that the Friends would post a bond to complete the restoration, allowing the U.S. Attorney to remove the lien from the property. There is potential for future development on the property and impact on the view and trailhead potential for the Palm Canyon Trail.

The parcel is currently in escrow with closing likely to occur in January or early February. In order to reach a deal with the landowner in a situation where there was a competing buyer, the Friends had to negotiate the purchase price before they had time to obtain an appraisal and before they had time to apply for a local assistance grant. The Friends determined that they would take the financial risk because they believed it was important to secure this property. The Friends has now applied for a local assistance grant to provide reimbursement for their purchase of the property. Since negotiating the deal and opening escrow back in October (it has been an unusually long escrow because of some title issues involving the lien on the property), they have also obtained an appraisal. The appraisal gives a value of \$207,000 for the property. The Friends negotiated a purchase price of \$275,000, which, therefore, exceeds market value. The Friends is seeking a grant in the amount of \$207,000 so that the Conservancy's grant would not exceed the market value of the property. The balance of the purchase price would be a Friends' contribution to the acquisition.

Paul Marchand asked if there was litigation between the USFS and Mr. Muller. Bill answered that there was not litigation but the USFS had requested that Mr. Muller restore the damage that had been done and he had declined, so the USFS obtained a judgment and put a lien on the property. Paul asked for clarification that the Lien is still on the property and Bill answered yes. The Friends have agreed on a new restoration plan with the USFS because over the years nature has provided some restoration of the property, so the work required to be accomplished is different now than it was 7 years ago. The Friends has obtained a letter of credit to underwrite a performance bond with the USFS and they will ask the US Attorney to prepare a satisfaction of judgment form to be filed with escrow, removing the lien from the property. The cost to restore the property will be in addition to the purchase price. Paul is concerned that the property may get tied up in litigation because of this. Bill answered that he

did not believe there was any danger of this because the Friends have agreed to perform the restoration work.

Karl Baker asked what the approximate differential was between the purchase price and the appraised value of the property. Bill answered that it was \$70K.

John Donnelly stated that he had an issue with how the transaction has been proposed and the State's providing funds to pay more than fair market value for the property. Bill answered that the State is not providing more than fair market value. John answered that the State would still be participating in a transaction that represents more than fair market value. His issue is predicated on the legislative analyst's report regarding appraisals that came out in December. John noted that a work group asked for the AG's opinion on this subject written for the Santa Monica Mountains Conservancy and the outcome stated the following: the Conservancy may not authorize the payment of state source funds for the purchase of real property which exceeds the final fair market value appraisal approved by the Department of General Services (DGS). John requested that the CVMC's AG representative look into this opinion before the Board goes forward with this item.

Laurie stated she would have to go back and look at the AG's opinion but, she thinks that this does not prohibit this particular transaction as she understands it. Laurie asked the Board if they would like her to go back and give a more specific opinion on this.

John noted that the WCB's policy is not to participate in these types of transactions. Anne Sheehan added that this is also how the Public Works Board operates. John noted that when the WCB gives grants to acquire property, they are specifically not allowed to purchase a property over fair market value as per DFG code. John noted that the opinion does not specifically say that it cannot be done but, the Constitution says the State cannot provide a gift of public funds and the perception is that by paying more than market value the State is providing a gift of public funds.

The Chairman asked Bill if it would derail the transaction if the item were postponed to the next meeting to give the AG time to complete more research on this issue. Bill noted that he could not speak for the Friends but, he thought they would most likely go ahead and complete the transaction and ask for reimbursement later. He also stated that the Conservancy has not received the opinion that John is referring to and his question for the AG to research would be if the Conservancy does not make a grant that exceeds the fair market value of the property then it is not a gift of public funds in that context. The Friends is contributing the amount above the market value of the property. Paul Marchand suggested that the best course of action is to give Laurie some guidance to research this issue and to provide a report to the Board at the next meeting. Paul noted that he believes this issue warrants more research so the Board has all the information necessary to make its decision.

Tom Kirk stated that he believes another option may be to conditionally move forward with this transaction because he presumes the Friends would prefer to get a signal sooner rather than later. Perhaps the Board could conditionally approve the transaction contingent on the favorable opinion of the AG's office. Chris Mills noted that he was going to make a similar comment and he would support that very much. Ellen Trover stated she thinks it is very important that this property is acquired for conservation and she supports Mr. Kirk's proposal. She also noted that she understands that there was a competing offer on the property and she thinks this is something that the AG's office should be made aware of.

John Donnelly noted that he thinks that the Conservancy is treading into serious water if they do not have an opinion before they approve this resolution. He thinks the Conservancy should not set this type of precedent when making decisions. Anne Sheehan agrees with John that

the Board should wait for the legal opinion. She also noted that it may affect the Conservancy's future bond allocations if they are spending funds on property that is over market value and she believes the Conservancy needs to be squeaky clean on all transactions.

Tom Kirk noted that he was saying the same thing; however, with a conditional approval by the Board the decision does not need to wait 2 months and the outcome be determined at the next meeting.

Karl Baker asked if there is any way the Board can direct counsel to render a legal opinion and set a time to telephone poll the members before the next meeting so it can be expedited. Paul Marchand did not think that would be within Bagley Keene rules and he believes the Board would have to call a special meeting. Paul then suggested the Board give the AG's office a month to research the answer and schedule a special meeting on February 11, 2008. and discuss the matter in Closed Session. Karl Baker made a motion to approve and Joan Taylor seconded the motion.

Chairman Marchand opened the item for public comment. Buford Crites, a member of the public, addressed the Board. He stated that the Friends would not likely buy the property without some assurances from the Board that this Grant would be approved. The Conservancy is not being asked to do anything that is over the appraised property value.

Chris Mills mentioned that the Conservancy is only contributing the appraised value to the acquisition. It would be a shame if the Friends missed the opportunity to purchase this property because this transaction is time critical. He supports Mr. Kirk's idea.

Tom Kirk noted that he has kept track of the progress on this transaction and mentioned that it has been a bit of a challenge to put this deal together. He is concerned procedurally about scheduling another meeting and scheduling it in Closed Session; he does not think it is necessary. Paul noted that it is the potential exposure to litigation. He also noted that he senses the frustration of this Board on this decision. Tom Kirk noted that the Board should leave it to staff determine if the project should go forward dependent on the outcome of the AG's opinion. If the opinion is not clear, then he is confident that staff will make the correct decision and it could take 1-2 weeks rather than a month.

Joan Taylor asked the AG if Tom's motion would be appropriate for the Board to approve today. Laurie answered, yes.

In the interest of time Karl Baker and Joan Taylor withdrew their motions and yielded to Tom Kirk's motion to conditionally approve the transaction contingent on the favorable opinion of the AG's office.

John Donnelly asked Bill if the appraiser had the information about the other potential buyer willing to purchase the property for \$270K and if the Friends could ask the appraiser to include this information in the appraisal. Bill noted that perhaps the motion could include direction to staff to have the Friends discuss this point with the appraiser and seek a letter to reflect this information.

Chairman Marchand noted that no body can bind its successors and he does not agree that the decisions we make here as a Board is a binding precedent.

Ellen Trover suggested that if the AG does not have a favorable opinion, then the item should be discussed at our next regular meeting because the Board should be provided with

information about the outcome. Chairman Marchand requested that staff add this item to the agenda to discuss in closed session due to potential exposure to litigation.

Chairman Marchand then asked if there was any discussion on the item and there was none. He asked for a motion to approve Item 4.2. A motion was made and seconded (Kirk/Mills) to conditionally approve Resolution 2008-02 pending a favorable opinion by the AG's office. The motion passed with the following members voting yes: K. Dice, K. Baker, J. Kalish, T. Kirk, E. Konno, C. Mills, A. Muth, A. Sheehan, J. Taylor, E. Trover, and P. Marchand. The following members voting no: J. Donnelly and A. Sheehan. The following members abstained: J. Taylor.

5.0 Closed Session Items

Chairman Marchand asked for a motion for the Board to add an urgent item to the agenda as a Closed Session item. A motion was made and seconded (Kirk/Trover) to add the Closed Session item although it was not scheduled on the agenda. The Board went into Closed Session @ 3:10 pm to discuss the scheduled matter pertaining to the lawsuit filed by Mary Justice v. Coachella Valley Association of Governments and the various Permittees, including the Conservancy, regarding the Coachella Valley Multiple Species Habitat Conservation Plan. The Board adjourned the Closed Session portion of the meeting and resumed the regular meeting at 3:15 PM.

6.0 Discussion Items

Chairman Marchand mentioned to the Board that he drafted and sent a letter to the Speaker of the Assembly, Fabian Nunez, reminding him about the 2 year Conservancy Board vacancy for the Assembly appointment.

6.1 Kerrie reminded the Board about the deadline for submission of their 700 Forms.

6.2 Geary Hund gave an oral presentation about the Conservancy's trails planning effort.

7.0 Reports

Chairman Marchand called for an omnibus motion to receive and file written reports items 7.1-7.4. A motion was made and seconded (Baker/Muth) to receive and file written reports 7.1 - 7.4. The motion was adopted by all members saying "Aye" in a unanimous vote.

The Attorney General had nothing to report.

8.0 Adjourn to Regular Meeting on March,10 2008.

A motion was made and seconded (Trover/Taylor) to adjourn. The meeting was adjourned without objection at 3:40 p.m.